

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

KAMEKO R. WILLIAMS, as the natural daughter
And next friend of James Brownlee, deceased and
on behalf of all of the heirs-at-law and wrongful
death beneficiaries of James Lee Brownlee, Deceased

PLAINTIFF

VS.

CIVIL ACTION NO. 1:18-CV-128-GHD-DAS

PATROLMAN ADAM ZACHARY, in his
Individual Capacity; COLONEL CHRIS
GILLARD, of the Mississippi Highway Safety
Patrol, in his Official Capacity; DEPUTY
"FNU" SHANKLE, in his Individual
Capacity; DEPUTY "FNU" WESTMORELAND,
in her Individual Capacity; SHERIFF
JAMES D. MEYERS, in his Individual
Capacity; and, OTHER UNKNOWN JOHN
AND JANE DOES 1-10

DEFENDANTS

MOTION TO DISMISS BASED ON
ELEVENTH AMENDMENT IMMUNITY

COMES NOW, Defendant, Colonel Chris Gillard, through undersigned counsel,
and submits his Motion to Dismiss Based on Eleventh Amendment Immunity pursuant
to Fed. R. Civ. P. 12(b)(1) and would show unto the Court as follows:

1. Plaintiff's suit arises out of the death of James Lee Brownlee. *Compl.* [1] p.
1. Plaintiff alleges that Brownlee died of a heart attack on July 5, 2016, after having been
arrested by a Mississippi Highway Patrolman on July 4, 2016. *Id.* at ¶¶ 13-20. Plaintiff
alleges, among other things, that Col. Gillard is, in part, responsible for this death. *Id.*
at ¶¶ 23-26. Specifically, Plaintiff alleges that Col. Gillard and the Mississippi Highway
Patrol "have a policy, custom, procedure, and practice of failing to ensure that prisoners
are given medical attention when they suffer from known serious medical needs." *Id.* at

¶¶ 24 & 26. Additionally, Plaintiff claims that Col. Gillard and the Highway Patrol “have a have a policy, custom, procedure, and practice of failing to ensure that MHSP Patrolmen are adequately trained to detect when prisoners are suffering from serious medical needs.” *Id.* at ¶ 25. Col. Gillard is being sued in his official capacity only and Plaintiff is only seeking to recover monetary damages in this matter. *Id.* at ¶¶ 40 – 45.

2. Col. Gillard is entitled to Eleventh Amendment immunity in this matter. And, as Plaintiff has not requested any injunctive relief, the *Ex Parte Young* exception to Eleventh Amendment Immunity does not apply. Even if Plaintiff’s had requested injunctive relief, any alleged constitutional violations are not ongoing which would make *Ex Parte Young* inapplicable in this matter.

3. Additionally, Col. Gillard is not amenable to suit here as he is not a “person” under the meaning of 42 U.S.C. § 1983.

WHEREFORE, PREMISES CONSIDERED, for all of the reasons outlined above and in his Memorandum in Support of His Motion to Dismiss, Col. Chris Gillard is immune from suit in this matter and the suit against him is due to be dismissed.

DATE: OCTOBER 8, 2018

COLONEL CHRIS GILLARD, Defendant

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

BY: /s/ J. Chadwick Williams

J. Chadwick Williams (MSB #102158)

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will automatically send notice to the following counsel of record:

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This, 8th day of October, 2018.

/s/ J. Chadwick Williams